UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

T. ROWE PRICE TAX-FREE HIGH YIELD FUND, INC., SMITH BARNEY INCOME FUNDS/SMITH BARNEY MUNICIPAL HIGH INCOME FUND, DRYDEN NATIONAL MUNICIPALS FUND, INC., LOIS AND JOHN MOORE and ACA FINANCIAL GUARANTY CORPORATION

Plaintiffs,

v.

KAREN M. SUGHRUE, GARRY L. CRAGO, JEAN W. CHILDS, PAULA EDWARDS COCHRAN, G. STEVENS DAVIS, JR., JULIA B. DEMOSS, WILLIAM R. DILL, LESLIE A. FERLAZZO, JOYCE SHAFFER FLEMING, ERIC W. HAYDEN, CATHERINE CHAPIN KOBACKER, ANNE MARCUS, CELESTE REID, RICHARD J. SHEEHAN, JR., JOSEPH SHORT, GREGORY E. THOMAS, SUSAN K. TURBEN, DONALD W. KISZKA and ADVEST, INC.,

Defendants.

Civil Action No. 04-11667 RGS Consolidated into Civil Action No. 05-10176-RGS*

PLAINTIFFS MOTION TO STRIKE IN SUPPORT OF THEIR OPPOSITION TO DEFENDANTS MOTIONS TO DISMISS

The The Institutional Bondholders, the Moores The Institutional Bondholders, the Moores and ACA move M.M. Sughrue, M. Sughrue, Exhibit 4 to the Memorandum in Support Of Bradford Defendants Motion M. Sughrue and Paragraph 11 and Paragraph 11 of the Bradford Defendants Motion To Dismiss the assas Argument I.A.4 of their memorandum in support of said n

properlyproperly before the Court in its consideration of Defendants Motions To Dismproperly before the C thereof, Plaintiffs state as follows:

- 1. In In ruling on a motion to dismiss pursuant to In ruling on a motion to dismiss pursuant to Fed.R.C. onlyonly consider the allegations of the complaint, the documents only consider the allegations of the complaint, the documents only consider the allofof public record, and other matters of which the court may take judicial notice. BancoBanco SantaBanco San dede Puerto Rico v. Lopez-Stubbe (In rede Puerto Rico v
- 2. In In support of their motions to dismiss the Bradford support of their motions to dismiss the Bradford of Karenof Karen M. Sughrue and an excerpt from the book <u>Liberal Arts Colleges: Liberal Arts Colleges: Surviv Endangered?</u> by David W. Breneman (Exhibit 4 to the Memorandum by David W. Breneman (Exhibit 4 to Defenda Defendants Defendants Motion To Dismiss). These materials are not the type that may be considered motion to dismiss and should be stricken from the record.
- 3. ParagraphParagraph 11 of the Bradford Defendants Motion to Dismiss tParagraph 11 of ComplaintComplaint and Argument I.A.4 of their memorandumComplaint and Argument I.A.4 of their memoran the Four Year Statute of Repose.
- 4. EachEach Each of Each of the Each of the Each of the BradfordEach of the Bradford Each of the and Second Second Standstill and Tolling Agreement to which the Plaintiffs are either signatories or beneficiaries. Copies of beneficiaries. Copies of the agreements are attached beneficiaries. Copies o the the agreements, the Bradford Defendants agreed to waive their rights to enforce statutes of limitation and and statutes of and statutes of repose against the Plaintiffs in exchange for Plaintiffs dismissal of and statutes of and and Plaintiffs agreement not to file any lawsuit against the Bradford Defand Plaintiffs agreement not to f period of time. In addition, paragraph 1 of each agreement contains the following provision:

EachEach Potential Defendant hereby Each Potential Defendant hereby agrees and acknowledges t shallshall not plead or shall not plead or raise and is estopped from pleading or raising the shall not pleading the Tolling Period at me during the Tolling Period as part Limitations Period with respect to any Claim.

5. ArgumentArgument I.A.4 violates the Bradford Defendants agreement not to plead oArgument anyany statute of limitation or statute of repose against the Pla specificspecific performance of the agreement the Bradford Defendants have breached, which is best accomplished by striking the offending argument.

Wherefore, for the reasons set forth above, this Court should strike:

- 1. the Affidavit of Karen M. Sughrue;
- 2. ExhibiExhibitExhibit 4 to the Memorandum in Support Of Bradford Defendants MotionExh Dismiss; and
- 3. ParagraParagraphParagraph 11 aParagraph 11 and of the Bradford Defendants Motion To Disa

 Complaint and Argument I.A.4 of the memorandum in support of said motion.

T.T. ROWE PRICET. ROWE PRICE TAX-FREE HIGHT. ROWE I INC., INC., SMITHINC., SMITH BARNEY INCOMEINC., SMITH BARNEYBARNEY MUNICIPAL HIGH INBARNEY MUNICI DRYDENDRYDEN DRYDEN NADRYDEN NATIONALDRYDE. LOISLOIS and JOHN LOIS and JOHN MOORLOIS and JOHN GUARANTY CORPORATION

By their attorneys,

/s/ Michael Tabb

Thomas Hoffman, Esq. BBO # 237320 Thomas Greene, Esq. BBO# 210020 Michael Tabb, Esq. BBO # 491310 Greene & Hoffman, P.C. 125 Summer Street, 14th Floor Boston, Massachusetts 02110 (617) 261-0040

Dated: May 2, 2005

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(a)(2), I, Michael Tabb, counsel for the Plaintiffs, certify that I have conferred with the Bradford Defendants counsel in good faith to resolve or narrow the issues presented by the Plaintiffs Motion to Strike in Support of their Opposition to Defendants Motions to Dismiss.

/s Michael Tabb
Michael Tabb